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# Delaware Register of Regulations

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Issue Date: April 1, 2014

Volume 17 - Issue 10, Pages 935 - 1000

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 17, 2014.

Cover Photo by Dr. Brian Kutner

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 16	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	17 DE Reg. 755 (Final)
3300 Board of Veterinary Medicine.....	17 DE Reg. 445 (Final)
3500 Board of Examiners of Psychologists.....	17 DE Reg. 829 (Prop.) 17 DE Reg. 89 (Final)
	17 DE Reg. 417 (Prop.)
3600 Board of Geologists.....	17 DE Reg. 609 (Prop.)
4100 Board of Home Inspectors.....	17 DE Reg. 494 (Prop.)
	17 DE Reg. 243 (Final)
	17 DE Reg. 309 (Prop.)
5200 Board of Examiners of Nursing Home Administrators.....	17 DE Reg. 551 (Final)
	17 DE Reg. 196 (Prop.)
	17 DE Reg. 552 (Final)
5300 Board of Massage and Bodywork.....	17 DE Reg. 655 (Final)
	17 DE Reg. 342 (Final)
<b>Office of the State Bank Commissioner</b>	
Proposed Amendments to 16 Regulations of the State Bank Commissioner....	17 DE Reg. 832 (Prop.)
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	17 DE Reg. 418 (Prop.)
	17 DE Reg. 656 (Final)
<b>Public Service Commission</b>	
1001 Rules of Practice and Procedure of the DE Public Service Commission..	17 DE Reg. 554 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers.....	17 DE Reg. 310 (Prop.)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2202 Issuance of Duplicate Drivers' Licenses.....	17 DE Reg. 197 (Prop.)
2214 Waiver of Written Examinations for Certain New Residents.....	17 DE Reg. 197 (Prop.)
2251 Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle.....	17 DE Reg. 197 (Prop.)
2264 Use of Dealer License Plates on Boat Trailers.....	17 DE Reg. 197 (Prop.)
2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices.....	17 DE Reg. 197 (Prop.)
2274 Distribution of Literature Advertising Businesses.....	17 DE Reg. 197 (Prop.)
2275 Requirements for Licensing of Vehicle Dealers.....	17 DE Reg. 197 (Prop.)
<b>Division of Planning and Policy</b>	
2309 Standards and Regulations for Subdivision Streets and State Highway Access .....	17 DE Reg. 198 (Prop.)
<b>Division of Technology and Support Services</b>	
2501 External Equal Opportunity Complaint Procedure.....	17 DE Reg. 833 (Prop.)
<b>Division of Transportation Solutions</b>	
2405 Oversize/Overweight Hauling Permit Policy and Procedures.....	17 DE Reg. 202 (Prop.) 17 DE Reg. 756 (Final)
<b>EXECUTIVE DEPARTMENT</b>	
<b>Delaware Economic Development Authority</b>	
401 Procedures Regarding Non-State Guaranteed Bonds .....	17 DE Reg. 90 (Final)
403 Administration and Operation of Council on Development Finance ....	17 DE Reg. 90 (Final)
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<b>Division of Facilities Management</b>	
Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	17 DE Reg. 716 (Prop.)
Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	17 DE Reg. 63 (Prop.) 17 DE Reg. 446 (Final)
<b>Statewide Benefits Office</b>	
2001 Group Health Care Insurance Eligibility and Coverage Rules .....	17 DE Reg. 91 (Final)

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2001 Group Health Care Insurance Eligibility and Coverage Rules

17 DE Reg. 656 (Final)

**STATE BOARD OF PENSION TRUSTEES**

**The Delaware Public Employees' Retirement System**

The Delaware Public Employees Pension System.....

17 DE Reg. 91 (Final)

**Symbol Key**

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))  
3 **DE Admin. Code** 1001

**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend Commission Regulation 8.8 relating to the Jockey Fee by adding a new regulation 8.8.3 Individual Excess On-Track Accident Insurance. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

**Comments**

A copy of the proposed regulations is being published in the April 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2014. Written materials submitted will be available for inspection at the above address.

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## Adoption of Proposed Regulation

On or after May 1, 2014, following review of the public comments, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed new regulation 8.8.3 Individual Excess On-Track Accident Insurance or make additional changes because of the public comments received.

### 1001 Thoroughbred Racing Rules and Regulations

*(Break in Continuity of Sections)*

#### 8.0 Jockeys and Apprentice Jockeys

*(Break in Continuity Within Section)*

##### 8.8 Jockey Fee:

8.8.1 The fee to a Jockey in all races shall be, in the absence of special agreement, as follows:

Purse Level	Winning Mount Fee	2 <sup>nd</sup> Place Mount Fee	3 <sup>rd</sup> Place Mount Fee	Other Mounts
Up to \$10,000	10%	\$100	\$85	\$75
\$10,001 - \$14,999	10%	5%	\$85	\$75
\$15,000 - \$19,999	10%	5%	\$90	\$75
\$20,000 - \$49,999	10%	5%	5%	\$75
\$50,000 - \$99,999	10%	5%	5%	\$85
\$100,000 and up	10%	5%	5%	\$105

8.8.2 A jockey fee shall be considered earned by a rider when he or she is weighed out by the Clerk of Scales, except when:

- 8.8.2.1 A rider does not weigh out and ride in a race for which he or she has been engaged because an Owner or Trainer engaged more than one rider for the same race; in such case, the Owner or Trainer shall pay an appropriate fee to each rider engaged for such race.
- 8.8.2.2 Such rider capable of riding elects to take himself or herself off the mount without, in the opinion of the Stewards, proper cause therefore.
- 8.8.2.3 Such rider is replaced by the Stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

##### 8.8.3 Individual Excess On-Track Accident Insurance.

Each jockey shall pay a fee of \$4 per mount or such amount per mount as is specified by the Delaware Jockeys' Health & Welfare Benefits Board for coverage under the Individual Excess On-Track Accident Insurance policy provided through the Delaware Jockeys' Health & Welfare Benefits Fund.

**\*Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

**1001 Thoroughbred Racing Rules and Regulations**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

### PUBLIC NOTICE

#### 1915(i) Home and Community-Based Services Waiver Renewal Application

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR 447.205, 42 CFR 441.304 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / Division of Developmental Disabilities Services (DDDS) is seeking public comments on the 1915(c) Home and Community-Based Services Waiver (HCBS) waiver renewal application.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Services (DMMA)/Division of Developmental Disabilities Services (DDDS) has submitted a 1915(c) Home and Community-Based Services (HCBS) Waiver renewal application to the Centers for Medicare and Medicaid Services (CMS).

#### Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

#### Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The waiver to provide home and community-based services to developmentally disabled adults was developed by the Division of Developmental Disabilities Services (DDDS) and the Division of Social Services (DSS) in 1982, received approval from the Center for Medicare and Medicaid Services (CMS), and became effective on July 1, 1983. The waiver includes support services necessary to maintain individuals in the community as an alternative to institutionalization. The cost of the Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS/DD) shall not exceed the cost of care of the Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

DDDS is the agency that has primary responsibility for administering the HCBS/DD waiver as well as providing, or contracting for the provision of, most of the services. Providers of Pre-Vocational Training, Supported Employment and Residential Habilitation services are certified by DDDS and contract directly with the Delaware Medical Assistance Program (DMAP).

## Summary of Proposal

Pursuant to the public notice requirements of section 1902(a)(13)(A) of the Social Security Act, 42 CFR 447.205, 42 CFR 441.304 and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services/Division of Medicaid and Medical Assistance/Division of Developmental Disabilities Services (DHSS/DMMA/DDDS) is seeking public comments on the 1915(c) Home and Community-Based Services (HCBS) Waiver renewal application. The current waiver expires on June 30, 2014 and must be renewed every five (5) years.

## Draft of Proposed Waiver Renewal Application

A draft of Delaware's waiver renewal application and a summary of proposed changes are currently available for review on the Division of Developmental Disabilities Services website at

<http://www.dhss.delaware.gov/ddds/>.

The provisions of this waiver renewal application are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## Fiscal Impact Statement

There is no increase in cost on the General Fund. Demonstrations must be "budget neutral" over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

### PUBLIC NOTICE

### Medicaid Coverage of Prescribed Drugs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding prescribed drug coverage, specifically, *changes to the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding prescribed drug coverage, specifically, changes to the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation.

**Statutory Authority**

- Patient Protection and Affordable Care Act, P.L. 111-148, enacted March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, enacted March 30, 2010 (collectively referred to as the Affordable Care Act)
- 1927(d)(7) of the Social Security Act, *Non-Excludable Drugs*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

**Background**

Effective January 1, 2014, section 2502 of the Affordable Care Act amends section 1927(d)(2) of the Social Security Act (the Act) by removing barbiturates, benzodiazepines and agents used to promote smoking cessation from the list of drugs a state Medicaid program may exclude from coverage or otherwise restrict. It also added section 1927(d)(7) of the Act which explicitly prohibits states from excluding the following drugs, or their medical uses, from coverage: barbiturates, benzodiazepines and agents used to promote smoking cessation, including agents approved by the Food and Drug Administration (FDA) under the over-the-counter (OTC) monograph process for purposes of promoting, and when used to promote, tobacco cessation.

**State Plan Amendment**

In light of the statute, states will need to remove from the state plan any indication that the following drugs are restricted or otherwise excluded: barbiturates, benzodiazepines and agents used to promote smoking cessation. To the extent that the state needs to change its state plan to be consistent with these Medicaid coverage requirements, the state will need to submit a state plan amendment (SPA) to be effective January 1, 2014.

**Summary of Proposal**

Pursuant to 42 CFR 447.205 and the Delaware Administrative Procedures Act, public notice is hereby given that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR 430.12. Upon CMS approval, the proposed changes will update Attachment 3.1-A of the Medicaid State Plan regarding the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation.

Delaware Medicaid did not take an 'exclusion' approach and currently provides coverage for these excludable drugs. Delaware treats these drugs as any other medically necessary therapeutic class. However, there are quantity limits in place to ensure appropriate use.

States were instructed by CMS to submit a state plan amendment (SPA) to remove benzodiazepines, barbiturates, and smoking cessation drugs from the list of drugs a state can exclude from coverage or restrict. If the language appears on the state plan page, the state cannot just uncheck the box, the language on the state plan page(s) needs to be removed, and also, revise the assigned numbering and/or lettering on the plan page(s).

**Fiscal Impact Statement**

This is a technical change to the Medicaid State Plan with no financial impact as Delaware Medicaid has been covering these drugs.

**DMMA PROPOSED REGULATION #14-10a****REVISION:**

Attachment 3.1-A  
Page 5 Addendum

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

**STATE: DELAWARE**

**LIMITATIONS**

**12.a. Prescribed Drugs:****Drug Coverage**

- 1) Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.
- 2) Drugs excluded from coverage by Delaware Medicaid as provided by Section 1927(d)(2) of the Act, include:
  - a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;
  - b. Drugs when used for cosmetic purposes or hair growth;
  - c. Drugs when used to promote fertility;
  - d. Drugs that have an investigational or experimental or unproven efficacy or safety status;
  - e. Drugs when used for anorexia, weight loss or weight gain;
  - f. ~~Effective January 1, 2013, barbiturates for dual eligible individuals, when used in the treatment of epilepsy, cancer, or a chronic mental health disorder (as Medicare Part D will cover);~~
  - g. ~~Effective January 1, 2013, benzodiazepines for dual eligible individuals (as Medicare Part D will cover).~~
- 3) Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

**Quantity and Duration**

Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

**DMMA PROPOSED REGULATION #14-10b****REVISION:**

Attachment 3.1.A.1

Page 2a

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****STATE: DELAWARE****MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED  
OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY**Citation (s)  
1927(d)(2) and 1935(d)(2)

Provision (s)

- (g) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee (see specific drug categories below)

# PROPOSED REGULATIONS

- (h) ~~barbiturates ALL [Except for dual eligible individuals, effective January 1, 2013, when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)]~~  
(see specific drug categories below)
- (i) ~~benzodiazepines ALL [Except for dual eligible individuals, effective January 1, 2013, as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)]~~  
(see specific drug categories below)

(The Medicaid agency lists specific category of drugs below)

- (a) Agents when used for anorexia, weight loss, weight gain: Megestrol Acetate, Somatropin, Lipase Inhibitor. Products in these categories require prior authorization.
- (d) Agents when used for the symptomatic relief cough and colds: Antihistamines, Antitussive, Decongestants, and Expectorants.
- (e) Prescription vitamins and mineral products, except prenatal vitamins and fluoride: Single entity vitamins, Multiple vitamins w/minerals, Nicotinic acid, Calcium salts, and Dialysis replacement products

## DMMA PROPOSED REGULATION #14-10c

REVISION:

Attachment 3.1.A.1  
Page 2b

### STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: DELAWARE

#### MEDICAID PROGRAM: REQUIREMENTS RELATING TO PAYMENT FOR COVERED OUTPATIENT DRUGS FOR THE CATEGORICALLY NEEDY

Citation (s)	CONTINUED	Provision(s)
1927(d)(2) and 1935(d)(2)		(f) Nonprescription drugs: Analgesic oral and rectal; Heartburn; Antiflatulents; Antidiarrheal; Antinauseants; Cough & Cold, oral; Cough & Cold, topical; Contraceptive Drugs; Laxatives & Stool Softeners; Lice Control Preparations; Nasal Drug Preparations; Nicotine Cessation Preparations; Ophthalmic Drug Preparations; Topical Anesthetics; Topical Antibacterials; Topical/Vaginal Fungicidals; and, Digestive Enzymes.

- (h) ~~Barbiturates: the Division of Medicaid & Medical Assistance covers all medications in these therapeutic categories [except for dual eligible individuals, effective January 1, 2013, when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)].~~
- (i) ~~Benzodiazepines: the Division of Medicaid & Medical Assistance covers all medications in these therapeutic categories [except for dual eligible individuals, effective January 1, 2013, as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)].~~
- \_\_\_ No excluded drugs are covered.
- 

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §133 (16 Del.C. §133)

### PUBLIC NOTICE

#### 4203 Cancer Treatment Program

Health Promotion & Disease Prevention, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the 4203 State of Delaware Cancer Treatment Program regulation.

The proposed regulation updates the technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program.

On April 1, 2014, the Department plans to publish proposed amendments to the 4203 State of Delaware Cancer Treatment Program regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the April 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Comprehensive Cancer Control Program at 302-744-1032.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Deborah Harvey by 4:30 p.m. on Wednesday, April 30, 2014 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

#### 4203 Cancer Treatment Program

### 1.0 Purpose

- 1.1 The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to uninsured Delawareans for the treatment of cancer.
- 1.2 Definition of "uninsured" for purposes of this regulation - a person who meets all technical, financial, and residency requirements of this regulation.

**2.0 Availability Of Funds**

- 2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.
- 2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

**3.0 General Application Information**

- 3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, disability, religion, national origin or political belief as per State and Federal law.
- 3.2 Each individual applying for the CTP is ~~requested, but not required,~~ to furnish his or her Social Security Number, if the individual has a Social Security Number.
- 3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

**4.0 Technical Eligibility**

- 4.1 The following for an adult applicant are required to receive benefits under this program. The adult applicant must:
  - 4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.
  - 4.1.2 Be a Delaware resident.
  - 4.1.3 Have been a Delaware resident at the time cancer was diagnosed.
  - 4.1.4 Have no health insurance.
    - 4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Veterans Affairs Medical Services, Correctional Healthcare Services, Medicare, and Medicaid.
    - 4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.
    - 4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.
  - 4.1.5 Meet one of the exemptions listed in the Patient Protection and Affordable Care Act's (PPACA) requirements to buy coverage.
    - 4.1.5.1 Exemptions listed in the PPACA include: part of a religion opposed to acceptance of benefits from a health insurance policy; are an undocumented immigrant; are incarcerated; a member of an Indian tribe; family income is below the threshold for filing a tax return; have to pay more than 8% of household income for health insurance, after taking into account any employer contributions or tax credits.
    - 4.1.5.2 Applicants will need to show proof of exemption from the PPACA.
  - 4.1.6 Be ineligible for Medicaid.
  - 4.1.57 Be over the age of 18 years.
  - 4.1.68 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the ~~treatment~~ diagnosis of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.
- 4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The minor applicant must:

- 4.2.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.
- 4.2.2 Be a Delaware resident
- 4.2.3 Have been a Delaware resident at the time cancer was diagnosed.
- 4.2.4 Be diagnosed with any cancer on or after July 1, 2004. Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.
- 4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.
- 4.3 An inmate of a public institution shall be ineligible for the CTP; ~~provided that the benefits of the CTP are not otherwise provided in full or in part.~~
- 4.3.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.
- 4.4 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

## **5.0 Financial Eligibility**

- 5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).
- 5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.
- 5.3 Countable income includes but is not limited to:
  - 5.3.1 Social Security benefits – as paid after deduction for Medicare premium
  - 5.3.2 Pension – as paid
  - 5.3.3 Veterans Administration Pension – as paid
  - 5.3.4 U.S. Railroad Retirement Benefits – as paid
  - 5.3.5 Wages – ~~net gross~~ amount ~~after~~ before deductions for taxes and FICA
  - 5.3.6 Senior Community Service Employment – ~~net gross~~ amount ~~after~~ before deductions for taxes and FICA
  - 5.3.~~6~~7 Interest/Dividends – gross amount
  - 5.3.~~7~~8 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.
  - 5.3.~~8~~9 Credit Life or Credit Disability Insurance Payments – as paid
  - 5.3.~~9~~10 Alimony – as paid
  - 5.3.~~10~~11 Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses
  - 5.3.~~11~~12 Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses
  - 5.3.~~12~~13 Self Employment – countable income as reported to Internal Revenue Service (IRS)
  - 5.3.~~13~~14 Unemployment Compensation - ~~as paid~~ gross amount before deductions for taxes and FICA
- 5.4 Excluded income includes but is not limited to:
  - 5.4.1 Annuity payments
  - 5.4.2 Individual Retirement Account (IRA) distributions
  - 5.4.3 Payments from reverse mortgages
  - 5.4.4 Capital gains from the sale of principal place of residence
  - 5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

- 5.4.6 Income tax refunds
- 5.4.7 Earned Income Tax Credit (EITC)
- 5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)
- 5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)
- 5.4.10 Loan payments received by individual
- 5.4.11 Proceeds of a loan
- 5.4.12 Foster care payments made on behalf of foster children living in the home
- 5.4.13 Retired Senior Volunteer Program (RSVP)
- 5.4.14 Veterans Administration Aid and Attendance payments
- 5.4.15 Victim Compensation payments
- 5.4.16 German reparation payments
- 5.4.17 Agent Orange settlement payments
- 5.4.18 Radiation Exposure Compensation Trust Fund payments
- 5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments
- 5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual
- 5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:
  - 5.5.1 Married couples if they live together; and,
  - 5.5.2 Unmarried couples who live together as ~~husband and wife~~ a married couple.
  - 5.5.3 Couples will be considered as living together as ~~husband and wife~~ a married couple if:
    - 5.5.3.1 They say they are married, even if the marriage cannot be verified; or,
    - 5.5.3.2 They are recognized as ~~husband and wife~~ a married couple in the community; or,
    - 5.5.3.3 One partner uses the other's last name; or,
    - 5.5.3.4 They state they intend to marry.
- 5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:
  - 5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.
  - 5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

## 6.0 Residency

- 6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently ~~or for an indefinite period~~, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.
- 6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.
- 6.3 Eligibility:
  - 6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.
  - ~~6.3.2 Will not be denied because of a durational residence requirement.~~
  - 6.3.3~~2~~ Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.
  - 6.3.4~~3~~ Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

- 6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

## 7.0 Verification Of Eligibility Information

- 7.1 The CTP ~~may~~ will verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.
- 7.2 Documentation shall be date stamped and become part of the CTP case record.
- 7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.
- 7.4 Failure to provide requested documentation ~~may~~ will result in denial or termination of eligibility.

## 8.0 Disposition Of Applications

- 8.1 The CTP will dispose of each application by a finding of full eligibility, temporary eligibility or ineligibility, unless:
- 8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;
- 8.1.2 There is a supporting entry in the case record that the applicant is deceased; or
- 8.1.3 There is a supporting entry in the case record that the applicant cannot be located.
- 8.2 Disposition definitions:
- 8.2.1 Full eligibility - applicants provided full eligibility in the CTP meet all technical, income and residency eligibility requirements
- 8.2.2 Temporary eligibility - applicants provided temporary eligibility meet all technical, income and residency eligibility requirements except 4.1.5
- 8.2.3 Ineligibility - applicants do not meet one or more of the technical, income and/or residency eligibility requirements

## 9.0 Temporary Eligibility

- 9.1 Applicants provided temporary eligibility in the CTP are not exempt from the requirements to buy health insurance coverage per the PPACA.
- 9.2 Applicants provided temporary eligibility in the CTP are only afforded coverage under the CTP until such time as they can obtain health insurance coverage either through an employer or through the individual health insurance marketplace.
- 9.2.1 CTP applicants can obtain individual health insurance coverage during the annual health insurance coverage open enrollment period on the individual health insurance marketplace.
- 9.3 After such time as the applicant can obtain health insurance coverage through means listed in 9.2, the CTP enrollee will be terminated from the CTP, regardless as to if the individual has followed through with obtaining health insurance coverage.

## 910.0 Changes In Circumstances And Personal Information

- 910.1 Enrollees are responsible for notifying the CTP of all changes in his/her circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.
- 910.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

## ~~4011.0~~ Termination Of Eligibility

- ~~4011.1~~ Eligibility terminates:

# PROPOSED REGULATIONS

~~4011.1.1~~ When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program as listed in 4.1.4.

~~4011.1.2~~ When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

~~4011.1.3~~ When the enrollee no longer meets the technical or financial eligibility requirements.

11.1.4 When applicants provided temporary eligibility status fail to obtain health insurance coverage or satisfy the requirements to transition to full eligibility status.

~~4011.1.45~~ Twenty-four months after the date that cancer treatment is initiated for each primary cancer diagnosis.

~~4011.2~~ If eligibility is terminated, it may only be renewed for an individual who is diagnosed with a new primary cancer. An individual who has a recurrence of cancer for which coverage has been previously provided is not eligible for additional coverage. The determination of a new primary cancer or recurring cancer is made by the treating physician.

11.3 When temporary eligibility is terminated or a disposition of ineligibility is received, applicants may request a financial hardship waiver and submit to DHSS for review to determine if a significant financial hardship exists for the applicant.

## **4412.0 Coverage And Benefits**

~~4412.1~~ Coverage is limited to the treatment of cancer as defined by DHSS.

~~4412.2~~ There is no managed care enrollment.

~~4412.3~~ Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

~~4412.4~~ Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

~~4412.5~~ Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

~~4412.6~~ The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

~~4412.7~~ Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

~~4412.8~~ In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

~~44.9~~ Enrollees receiving treatment for cancer through the CTP as of July 1, 2007 are able to extend their initial 12 month coverage to a maximum of 24 months after the date cancer treatment is initiated for each primary cancer diagnosis, provided that the enrollee continues to meet the technical and financial eligibility requirements.

## **4213.0 Cancer Treatment Services Which Are Not Covered**

~~4213.1~~ The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

~~4213.2~~ Services not related to the treatment of cancer as determined by DHSS are not covered.

~~4213.3~~ Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

## **4314.0 Changes In Program Services**

~~4314.1~~ When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

## **4415.0 Confidentiality**

4415.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

## **4516.0 Review Of CTP Decisions**

4516.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

4516.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

4516.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)(m) (16 **Del.C.** §122(3)(m))  
16 **DE Admin. Code** 4468

### **PUBLIC NOTICE**

#### **4468 Delivery of Hospice Services**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4468 Delivery of Hospice Services regulation.

Senate Bill 119, signed into law in June 2013, requires the Department of Health and Social Services to establish and implement uniform protocol for all hospice programs operating in Delaware for the safe disposal of unused medication upon the death or discharge of an in-home hospice patient. The proposed amendments add to the existing regulation a section 6.5.5 and an Appendix A: *Protocol Regarding the Safe Disposal of Unused Prescription Medication Following the Death of an In-Home Hospice Patient*.

On April 1, 2014, the Department plans to publish proposed amendments to the 4468 Delivery of Hospice Services regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the April 1, 2014 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Wednesday, April 30, 2014 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

#### **4468 Delivery of Hospice Services**

*(Break in Continuity of Sections)*

## **6.0 Service to Patients**

*(Break in Continuity Within Section)*

6.5 Medications:

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# PROPOSED REGULATIONS

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- 6.5.1 All medications administered to patients shall be ordered in writing and signed by the patient's physician or the interdisciplinary care physician.
- 6.5.2 Existing regulations for medications administered to patients in inpatient facilities will be applicable to hospice patients in inpatient facilities.
- 6.5.3 Medication administered to hospice patients should be consistent with the hospice philosophy which focuses on palliation; i.e., controlling pain and relieving other symptoms which are manifested during the dying process.
- 6.5.4 Resource materials relating to the administration and untoward effects of medications and treatments used in pain and symptom control will be readily available to nursing personnel.
- 6.5.5 The hospice must develop and implement written policies and procedures to include the requirements of the Department of Health and Social Services' Protocol Regarding the Safe Disposal of Unused Prescription Medication Following the Death of an In-Home Hospice Patient (refer to Appendix A).

*(Break in Continuity of Sections)*

## Appendix A

### Protocol Regarding the Safe Disposal of Unused Prescription Medication Following the Death of an In-Home Hospice Patient

The Department of Health and Social Services expects that each in-home hospice agency's policies and procedures will address each of the following:

#### A. Medication Disposal Following the Death of an In-Home Hospice Patient

- 1. Designation of hospice staff that will assist in the disposal of all unused prescription medications, regardless of the prescriber.
- 2. Definition of the timeframe in which the designated staff must:
  - a. Assist in the disposal of the unused prescription medications following the death on an in-home hospice patient; or
  - b. Contact the family member/designated primary care giver to arrange an appointment to assist in the disposal of the unused prescription medications if the in-home hospice patient was transferred to an inpatient hospice unit prior to the death.
  - c. Dispose of the unused prescription medication in the presence of another designated hospice staff in the event that the in-home hospice patient does not have a family member or designated primary care giver.
- 3. Checking of the medication label to confirm that the medication belonged to the patient, prior to assisting in the disposal of the unused prescription medication
- 4. Disposal of the unused prescription medications by at least one family member/designated primary care giver with the assistance of the designated hospice staff.
- 5. Disposal of the medications in accordance with the United States Food and Drug Administration guidelines which can be found at <http://www.fda.gov>.
- 6. Prohibition of removal by designated hospice staff of the unused prescription medications from the patient's residence.
- 7. Actions the designated hospice staff must take upon evidence of missing unused prescription medication(s).
- 8. Diversion/retention of the deceased patient's unused prescription medications could result in criminal offenses.

#### B. Education

- 1. Education of the family member/designated primary caregiver upon the in-home hospice patient's admission and death, as follows:

- a. Provision of a copy of the written hospice policies and procedures on the disposal of all prescription medications following the death of an in-home hospice patient.
  - b. Discussion of the prescription medication disposal policy in a language and manner that they understand to ensure that these parties are educated regarding the following:
    - the hospice's policies and procedures for the safe disposal of all prescription medications following the death of an in-home hospice patient
    - the diversion/retention of the deceased patient's unused prescription medications could result in criminal offenses
2. Education of hospice staff regarding the hospice's prescription medication disposal policy at the following times:
- prior to implementation of the policies and procedures
  - prior to any policy and procedure revision
  - upon hire (if applicable)
- C. Patient Record Documentation
1. Storage of patient records readily retrievable for 5 years after the patient's death.
2. Inclusion of the following in the patient's record:
- a. Documentation that the hospice's policies and procedures regarding the safe disposal of all unused prescription medications were provided and discussed with the family member/designated primary care giver upon the patient's admission and in-home death.
  - b. Documentation of one of the following:
    - an inventory of all disposed prescription medications and the signature of the family member/designated primary care giver that witnessed the disposal
    - family member/designated primary care giver refusal to dispose of prescription medications
- D. Personnel Education Documentation
1. Education regarding the hospice's prescription medication disposal policy must be documented at the following times:
- prior to implementation of the policies and procedures
  - prior to any policy and procedure revision
  - upon hire (if applicable)

**\*Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

**4468 Delivery of Hospice Services**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. §6010)  
7 DE Admin. Code 7401

#### REGISTER NOTICE

**7401 Surface Water Quality Standards**

#### BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The amended Surface Water Quality Standards presented here are the result of a review of the Standards that started with Start Action Notice #2013-32 in 2013. Department staff reviewed factors affecting human health criteria, Environmental Protection Agency (EPA) documents, staff recommendations, and documents related to site-specific criteria for the tidal Murderkill River. A markup of proposed amendments to the Surface Water Quality

Standards was prepared for the Register. A public hearing is scheduled for 5:00 PM, April 29, 2014 in the DNREC Auditorium, with comments accepted until May 16, 2014. To ensure compliance with the Clean Water Act and EPA regulations, the State of Delaware, in accordance with 7 **Del.C.** §6010, will amend the State of Delaware Surface Water Quality Standards.

**Possible Terms of the Agency Action:**

N/A

**Statutory Basis or Legal Authority to Act:**7 **Del.C.** §6010**List of Other Regulations That May be Impacted or Affected by the Proposal:**

Regulations Governing the Control of Water Pollution

**Notice of Public Comment:**

A public hearing is scheduled for 5:00 PM, on April 29, 2014 in the DNREC Auditorium, with public comments accepted until May 16, 2014.

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed revisions to the regulations please contact David Wolanski, Watershed Assessment and Management Section at (302) 739-9939 or by email at [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us).

The procedures for adopting regulations are established in 7 **Del.C.** §6006 and 29 **Del.C.** Chapter 101. Inquiries regarding comments should be directed to Robert Haynes at (302) 739-9039. Written comments should be addressed to: David Wolanski, Watershed Assessment and Management Section, Silver Lake Plaza-Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464. Electronic versions of comments are preferred; please e-mail comments to David Wolanski at [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us).

**\*Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

**7401 Surface Water Quality Standards**

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**DIVISION OF WATERSHED STEWARDSHIP**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)  
7 **DE Admin. Code** 7408

**REGISTER NOTICE**

**7408 TMDLs for Nutrients for the Murderkill River Watershed**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding proposed amendments to the Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming materials for the Murderkill River Watershed, which was promulgated in June of 2005. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Since promulgation of the 2005 Murderkill River TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions resulted in proposing scientifically-based, site-specific dissolved oxygen criteria for the tidal Murderkill River. This proposed amendment of the 2005 TMDLs is to comply with this new site-specific dissolved oxygen criteria for the tidal Murderkill River.

## Possible Terms of the Agency Action

This proposed action will amend the 2005 Murderkill River TMDLs Regulation. DNREC will work with Kent County Government and other parties to implement the requirements of the amended TMDLs.

## Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 et. seq., as amended.

## Other Legislation That May be Impacted

None

## Notice of Public Hearings and Comment Period

The Public Hearing on proposed amendments to the 2005 Murderkill River Watershed TMDLs Regulation will be held at 5:00 p.m., Tuesday, April 29, 2014, in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). All written comments must be received by May 16, 2014. Electronic submission is preferred.

Copies of the Proposed amendments to the 2005 Murderkill River TMDL Regulation and other related technical support documents are available on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140.

## Prepared By:

John Schneider, Watershed Assessment and Management Section, (302) 739-9939.

## 7408 TMDLs for Nutrients for the Murderkill River Watershed

### 1.0 Introduction and Background

- 1.1 Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.
- 1.2 A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts. These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.
- 1.3 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

# PROPOSED REGULATIONS

- 1.4 DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and ~~proposes the following developed and promulgated a~~ Total Maximum Daily Load regulation for nitrogen, phosphorous, and 5-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>) in 2005.
- 1.5 Since the promulgation of the 2005 TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions concluded that new scientifically-based, site-specific dissolved oxygen criteria should be adopted for the tidal Murderkill River. This amendment of the 2005 TMDLs is to comply with this proposed site-specific dissolved oxygen criteria for the tidal Murderkill River.

## 2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware

- Article 1.** ~~The total nitrogen waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 755.3 897 pounds per day. The waste load allocation for the Kent County Facility will be 751 pounds per day and for Canterbury Crossing Mobile Home Park will be 4.3 pounds per day. This load shall be expressed as annual average load in the National Pollutant Discharge Elimination System (NPDES) Permit for this facility.~~
- Article 2.** ~~The total phosphorus waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 62.7 51 pounds per day. The waste load allocation for the Kent County Facility will be 62.5 pounds per day and for Canterbury Crossing Mobile Home Park will be 0.2 pounds per day. This load shall be expressed as annual average load in the NPDES Permit for this facility.~~
- Article 3.** ~~The CBOD<sub>5</sub> (5-day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 1010.6 544 pounds per day. The waste load allocation for Kent County Facility will be 1001 pounds per day and for Canterbury Crossing Mobile Home Park will be 9.6 pounds per day.~~
- ~~**Article 4.** Treated wastewater from the City of Harrington wastewater treatment facility shall be used for spray irrigation. However, during the winter season, as well as during wet weather periods, when spray irrigation of treated wastewater is not practical, the effluent may be discharged into Browns Branch. During periods of surface discharge, the maximum discharge flow rate shall not exceed 750,000 gallons per day and daily waste loads shall not exceed 140 pounds per day for total nitrogen, 0.75 pounds per day for total phosphorus, and 37.5 pounds per day for CBOD<sub>5</sub>. Furthermore, the total annual waste load discharged from the City of Harrington wastewater treatment facility to the surface waters of Browns Branch shall not exceed 9125 pounds per year for total nitrogen, 55 pounds per year for total phosphorus, and 3000 pounds per year for CBOD<sub>5</sub>.~~
- Article 54.** ~~The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 2007-2008 base-line). This shall result in a yearly-average total nitrogen load of 560 972.6 pounds per day.~~
- Article 65.** ~~The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 2007-2008 base-line). This shall result in a yearly-average total phosphorous load of 96 12.1 pounds per day.~~
- Article 76.** ~~Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 65, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.~~
- ~~**Article 8.** Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Murderkill River Tributary Action Team, other stakeholders, and the public.~~

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Pilot Commissioners**

Statutory Authority: 23 Delaware Code, Section 102 (23 **Del.C.** §102)  
24 **DE Admin. Code** 1000

**PUBLIC NOTICE**

**1000 Board of Pilot Commissioners**

The Delaware Board of Pilot Commissioners, pursuant to 23 **Del.C.** §102(1), proposes to revise regulation 11.2 by striking it in its entirety and revise Section 6.0 by removing the 120 limitation on annual physicals. The purpose for the removal of subsection 11.2 is that vessels of the size required to be piloted by this rule are no longer calling at the port, making compliance with this regulation difficult and unnecessary. The purpose for the removal of the 120 limitation on annual physicals in regulation 6.0 is that the current constrictions of private health insurance often limit annual physicals to one per year, and this limitation is making compliance with insurance requirements difficult to impossible.

The Board will hold a public hearing on the proposed regulation change on May 16, 2014 at 1:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Margaret Strauss, Board Liaison for the Delaware Board of Pilot Commissioners, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 2, 2014 pursuant to 29 **Del.C.** §10118(a).

**1000 Board of Pilot Commissioners**

**1.0 Delaware licensed Bay and River Pilots are required to be familiar with the 23 Del.C. Ch. 1. Pilots §100 through 138.**

**2.0 Original License**

- 2.1 An examination shall be given to apprentices upon completion of their apprenticeship to determine their qualifications for licenses. The written examination shall be based on knowledge required to be learned by the apprentice during his/her apprenticeship.
- 2.2 No license shall be issued to any Pilot for any route for which he/she has not made required trips and passed required examination.
- 2.3 No original license will be issued for anything less than the route from entrance of Delaware Bay to Newbold Channel, and Chesapeake & Delaware Canal. All these licenses must be maintained through your pilot career.
- 2.4 The Board of Pilot Commissioners shall issue endorsements for any tributaries of the Bay and River Delaware to any Delaware licensed Pilot who has passed examination for same.

**3.0 To Raise License**

Fourth Class Pilots shall demonstrate their knowledge to the Commission of their thorough understanding of vessel "squat" and other deep vessel handling characteristics prior to being licensed as a Third Class Pilot.

**4.0 Renewal of License**

The renewal date for Pilot Licenses is November 30, or the date determined by the Division of Professional Regulation, to comply with 23 **Del.C.** §115.

**5.0 All Delaware Licensed Pilots must:**

- 5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.
- 5.2 Hold a valid radar certificate. ARPA certification is also required.
- 5.3 Provide a copy of all licenses and certificates to the Commission Secretary.
- 5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.
- 5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that he or she has made such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she *is fully* familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.
- 5.6 Attend at least (40) hours of approved education every five (5) years. The course or courses of study shall total not less than 40 hours of formal training on subjects relating to navigation and piloting. All such courses may be taken at an approved education facility. The Board of Pilot Commissioners shall approve all courses before enrollment.
  - 5.6.1 The courses listed here are now approved by the Board and will continue to be approved until further notice:
    - Ship Handling, Port Revel  
Centre De Port Revel  
38136 St. Pierre de Bressieux  
France
  
    - Maritime Institute of Technology  
5700 Hammonds Ferry Road  
Linthicum Heights, MD 21090
  
    - SCI Maritime Training  
241 Water Street  
New York, NY 1003 8
  
    - South Hampton Institute  
Newtown Road, Warsash Hampshire  
England
  
    - Star Center Simulation Training Assessment & Research (STAR) Center  
2 West Dixie Highway  
Dania Beach, FL 33004
  
    - Mid-Atlantic Maritime Academy  
Virginia Beach, VA
- 5.7 Attend and complete at least once every five (5) years a Bridge Resource Management ("BRM") course recommended and approved by this Board or by the American Pilots Association. Classroom or simulator hours spent in attendance at a BRM course will count towards satisfaction of the requirement of subparagraph "E", above. All licensed pilots shall have passed and approved BRM course prior to 1 July 1997.

**6.0** Pilots must pass a designated physical examination every year ~~within 120 days~~ before their date of license renewal. Results of the examination shall be reported on the form approved by the Board. Examinations may also be ordered by the Board for any Pilot at any time for any cause. In addition, each Pilot shall report to the Commission concerning the Pilot's request for a waiver from the United States Coast Guard for any medical condition, as permitted by Federal regulation, as well as the results of any such waiver request. The initial report to the Commission shall be made at the same time that the waiver request is made to the Coast Guard, and a copy of the Coast Guard's decision on the waiver request shall be provided to the Commission within five business days of the Pilot's receipt of the waiver decision.

**7.0 In order to be granted a license renewal, any Pilot licensed by this Commission is and shall be required:**

- 7.1 To have rendered pilotage service to not less than 52 vessels in the course of the year preceding the year for which the renewal of such license is sought; and
- 7.2 To furnish to this Commission, in writing, not later than the time when application is made to this Commission for the renewal of such license, a list of all pilotages, during the period of the license whose renewal is sought, giving:
  - 7.2.1 The name of the vessel.
  - 7.2.2 The date of pilotage.
- 7.3 Provided however, that this requirement shall be proportionally reduced in number, or eliminated, upon presentation of proof in form and substance satisfactory to the Commission, that during the year about to be concluded, the applicant for renewal was engaged in administrative duties connected with pilotage on the Bay and River Delaware, or was duly assigned and engaged in administrative assignments for the benefit of said pilotage, or was temporarily disabled from the performance of this duties as a Pilot or other reason deemed satisfactory to the Commission.
- 7.4 In the event that the requirement for 52 pilotages is reduced or eliminated to the satisfaction of the Commission, a number of refresher trips may be required before renewal is granted.

**8.0 Docking, Undocking, and Anchoring of Vessels**

- 8.1 When a vessel is docking or anchoring, a Delaware licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secure to the dock, or until the vessel is anchored properly and firmly within a designated anchorage area.
- 8.2 Nonetheless, nothing in these Rules shall prevent the Master of a vessel from employing the services of a docking master.

**9.0 Casualty Reports**

- 9.1 It shall be the personal responsibility of all Pilots licensed by this Commission to make reports of all casualties, collisions, groundings, etc. These reports shall be made to the Division of Professional Regulation's Chief Investigator, with a copy sent to the Commission's liaison to the Investigator. All such reports must be made within five days of the occurrence, except that any marine casualty involving oil spillage, pollution, or death must also be reported by telephone, facsimile transmission, or telegram to the Investigator and Commission liaison within twenty-four hours of the occurrence, to be followed thereafter by the written report. Failure to make such reports within the required time frame may result in disciplinary proceedings.
- 9.2 Pilots licensed by this Commission are also required to furnish the Investigator and Commission liaison with a copy of all written reports the pilot makes to the U.S. Coast Guard relating to any occurrence through the pilot's licensed route of all casualties, collisions, or groundings. These pilots must provide the Investigator and the Commission liaison with copies of any Coast Guard findings based on these reports.

**10.0 Commission Recommendations**

It is suggested that, in the event any of the Pilots licensed by this Commission consider it unwise for a ship which he has boarded to get under way or leave a dock either due to weather or tide conditions, and the master of the ship insists on getting under way, the Pilot should refuse to assume his duties until such a time as it is in his opinion safe to proceed.

## 11.0 Offshore Trip Experience Requirement for Second Class Pilots

- 41.1 Under the provisions of 23 **Del.C.** §113(b), no person shall be eligible for licensure as a first class pilot by this Board, until that person has served at least one year in each of the lower classes.
- 41.2 ~~While holding a second or third class license, all pilots must make at least two inward bound trips on vessels rated over 100,000 summer deadweight tons, on the southeastern approach lane from "D" buoy to at least the Delaware Capes. Each such trip must be made while accompanied by a pilot holding a first class license for the Bay and River Delaware issued by either this Board or the Pennsylvania Navigation Commission. At least one of these trips must be made during darkness. Second class pilots must furnish proof of these trips to the Board at least thirty days prior to being granted their first class pilot license.~~

## 12.0 Service Requirement for Advancement from License Class to a Higher License Class

- 12.1 Under 23 **Del.C.** §113(b), a licensed pilot must serve at least one year in each of the previous lower pilot license classifications before the pilot is entitled to a first class license, permitting the pilot to provide pilotage services for "ships or vessels of any practical draft of water." 23 **Del.C.** §112(1). Using the plain meaning rule of legislative interpretation, the term "serve" as used in Section 113(b) means to actively engage in the pilot profession during a full one-year term, and not merely to hold a current license for twelve months.
- 12.2 For example, if a pilot is unavailable for pilotage assignments during a one-year term, the total time for which the pilot was unavailable shall not be counted toward the one-year requirement. This circumstance will then affect the pilot's license renewal date, at the completion of the total one-year term.

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### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 **Del.C.** §4106(a)(1))  
24 **DE Admin. Code** 4100

### PUBLIC NOTICE

#### 4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes address two separate issues. The first is a change to regulation 4.0 which would enable applicants with five years of experience or who have completed 250 home inspections to obtain a license despite not being eligible as an endorsement candidate. Currently, such candidates must become trainee registrants before obtaining a home inspection license. The second proposed change relates to regulation 18.0 regarding standards of practice. The proposed changes would reflect recent changes to the American Society of Home Inspectors standards of practice so as to allow the practice of home inspection in Delaware to remain consistent with surrounding states.

The Board will hold a public hearing on the proposed regulation change on May 13, 2014 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 28, 2014 pursuant to 29 **Del.C.** §10118(a). The Board will deliberate on the proposed changes at its regularly scheduled meeting on June 10, 2014 at 9:30 a.m.

**4100 Board of Home Inspectors*****(Break in Continuity of Sections)*****4.0 Licensure Requirements**

Each applicant, other than endorsement applicants, for a home inspector license must provide the Board with the following, or have this information provided from the appropriate source, where indicated:

- 4.1 Evidence in a form satisfactory to the Board that the applicant has successfully completed high school or its equivalent. Such evidence includes a certified transcript or confirmation of G.E.D.
- 4.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the examination designated by the Board in section 11.0. Evidence shall include confirmation from the authorized testing agency that the applicant has achieved a passing score on the Board-approved examination.
- 4.3 Evidence in a form satisfactory to the Board that the applicant has completed the education requirements set forth in section 5.0. Evidence shall include a certificate or other acknowledgment of completion of the education requirement that is submitted to the Board by the applicant. This document shall identify the course, the course provider and location, and the date completed.
- 4.4 ~~Evidence in a form satisfactory to the Board that the applicant has completed the trainee requirements. The applicant shall submit a log on a Board-approved form documenting the experience. The Board retains the discretion to request copies of sample home inspection reports for review to verify experience.~~
- 4.4 For trainee applicants:
  - 4.4.1 Evidence in a form satisfactory to the Board that the applicant has completed the trainee requirements. The applicant shall submit a log on a Board-approved form documenting the experience. The Board retains the discretion to request copies of sample home inspection reports for review to verify experience.
- 4.5 For non-trainee/experience applicants at least one of the following:
  - 4.5.1 Evidence in a form satisfactory to the Board of not less than five years' experience performing home inspections such as a notarized affidavit from an employer or employers, business license or tax documents showing self-employment and a log of home inspections.
  - 4.5.2 A log documenting no fewer than 250 home inspections, and evidence that the applicant is a member of the American Society of Home Inspectors ("ASHI"), the National Association of Home Inspectors ("NAHI") or the International Association of Certified Home Inspectors ("INTERNACHI"). The Board may request copies of sample home inspection reports to verify experience.
- ~~4.5~~ 4.6 Evidence in a form satisfactory to the Board that the applicant, or the applicant's employer, carries errors and omissions insurance in an amount equal to or greater than \$50,000 and liability insurance in an amount equal to or greater than \$250,000. Evidence shall include a notarized certificate of insurance submitted to the Board by the insurance carrier.

***(Break in Continuity of Sections)*****18.0 Standards of practice.*****(Break in Continuity Within Section)***

- 18.5 Plumbing.
  - 18.5.1 The home inspector shall inspect:
    - 18.5.1.1 Interior water supply and distribution systems, including all fixtures and faucets.
    - 18.5.1.2 Drain, waste, and vent systems, including all fixtures.
    - 18.5.1.3 Water heating equipment and hot water supply system.

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## PROPOSED REGULATIONS

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- 18.5.1.4 Vent systems, flues, and chimneys.
- 18.5.1.5 Visible fuel storage and fuel distribution systems.
- 18.5.1.6 Drainage sumps, sump pumps, and related piping.
- 18.5.2 The written report shall include description of:
  - 18.5.2.1 Water supply, drain, waste, and vent piping materials.
  - 18.5.2.2 Water heating equipment, including energy source(s).
  - 18.5.2.3 Location of main water and fuel shut-off valves.
- 18.5.3 The home inspector is not required to:
  - 18.5.3.1 Inspect:
    - 18.5.3.1.1 Clothes washing machine connections.
    - 18.5.3.1.2 Interiors of flues or chimneys that are not readily accessible.
    - 18.5.3.1.3 Wells, well pumps, or water storage related equipment.
    - 18.5.3.1.4 Water conditioning systems.
    - 18.5.3.1.5 Solar water heating systems.
    - 18.5.3.1.6 Fire and lawn sprinkler systems.
    - 18.5.3.1.7 Private waste disposal systems.
    - 18.5.3.1.8 Backflow prevention device.
  - 18.5.3.2 Determine:
    - 18.5.3.2.1 Whether water supply and ~~waste~~ sewage disposal systems are public or private.
    - 18.5.3.2.2 Water supply quantity or quality.
  - 18.5.3.3 Measure water supply flow and pressure, and well water quantity.
  - 18.5.3.4 Fill shower pans and fixtures to test for leaks.
  - ~~18.5.3.35~~ Operate automatic safety controls or manual stop valves.
- 18.6 Electrical
  - 18.6.1 The home inspector shall inspect:
    - 18.6.1.1 Service drop.
    - 18.6.1.2 Service entrance conductors, cables, and raceways.
    - 18.6.1.3 Service equipment and main disconnects.
    - 18.6.1.4 Service grounding.
    - 18.6.1.5 Interior components of service panels and sub-panels.
    - 18.6.1.6 Visible conductors.
    - 18.6.1.7 Overcurrent protection devices.
    - 18.6.1.8 A representative number of installed lighting fixtures, switches, and receptacles.
    - 18.6.1.9 Ground fault circuit interrupters.
  - 18.6.2 The written report shall include description of:
    - 18.6.2.1 Amperage and voltage rating of the service.
    - 18.6.2.2 Location of main disconnect(s) and panels.
    - 18.6.2.3 Presence of solid conductor aluminum branch circuit wiring and visible knob and tube wiring.
    - 18.6.2.4 Absence of smoke detectors.
    - 18.6.2.5 Type of wiring.
  - 18.6.3 The home inspector is not required to:
    - 18.6.3.1 Inspect:
      - 18.6.3.1.1 Remote control devices.
      - 18.6.3.1.2 ~~Alarm systems and components.~~ Or test smoke and carbon monoxide alarms, security systems and other signaling and warning devices.

- 18.6.3.1.3 Low voltage wiring systems and components.
- 18.6.3.1.4 Ancillary wiring systems and components not part of the primary electrical power distribution system.
- 18.6.3.1.5 ~~Solar-powered systems and their components.~~ Solar, geothermal, wind and other renewable energy systems.
- 18.6.3.1.6 Emergency backup power systems.
- 18.6.3.2 Measure amperage, voltage, or impedance.

## 18.7 Heating.

18.7.1 The home inspector shall:

- 18.7.1.1 Open readily accessible access panels.
- 18.7.1.2 Inspect:
  - 18.7.1.2.1 Installed heating equipment.
  - 18.7.1.2.2 Vent systems, flues, and chimneys.
  - 18.7.1.2.3 Distribution systems.

18.7.2 The written report shall include description of:

- 18.7.2.1 Energy sources.
- 18.7.2.2 Heating systems.

18.7.3 The home inspector is not required to:

- 18.7.3.1 Inspect:
  - 18.7.3.1.1 Interiors of bent systems flues ~~or~~ and chimneys that are not readily accessible.
  - 18.7.3.1.2 Heat exchangers.
  - 18.7.3.1.3 Humidifiers or dehumidifiers.
  - 18.7.3.1.4 Electronic air filters.
  - 18.7.3.1.5 Solar, geothermal, and other renewable energy heating systems.
  - 18.7.3.1.6 Heat-recovery and similar whole-house mechanical ventilation systems.
- 18.7.3.2 Determine:
  - 18.7.3.2.1 Heat supply adequacy or and distribution balance.
  - 18.7.3.2.2 The adequacy of combustion air components.

***(Break in Continuity Within Section)***

## 18.9 Interior.

18.9.1 The home inspector shall inspect:

- 18.9.1.1 Walls, ceilings, and floors.
- 18.9.1.2 Steps, stairways, and railings.
- 18.9.1.3 Countertops and a representative number of installed cabinets.
- 18.9.1.4 A representative number of doors and windows.
- 18.9.1.5 Garage doors and garage door openers.

18.9.2 The home inspector is not required to inspect:

- 18.9.2.1 Paint, wallpaper, and other finish treatments.
- 18.9.2.2 ~~Carpeting~~ Floor coverings.
- 18.9.2.3 Window treatments.
- 18.9.2.4 Central vacuum systems.
- 18.9.2.5 Household appliances.
- 18.9.2.6 Recreational facilities.
- 18.9.2.7 Appliance thermostats including their calibration, adequacy of heating elements, self cleaning oven cycles, indicator lights, door seals, timers, clocks, timed features and other specialized features of the appliance.
- 18.9.2.8 Operate or confirm the operation of every control and feature of an inspected appliance.

# PROPOSED REGULATIONS

## 18.10 Insulation and ventilation.

### 18.10.1 The home inspector shall inspect:

- 18.10.1.1 Insulation and vapor retarders in accessible unfinished spaces.
- 18.10.1.2 Ventilation of attics and foundation areas.
- 18.10.1.3 Kitchen, bathroom, laundry and similar exhaust systems.
- 18.10.1.4 Clothes dryer exhaust systems.

### 18.10.2 The written report shall include description of:

- 18.10.2.1 Insulation and vapor retarders in accessible unfinished spaces.
- 18.10.2.2 Absence of insulation in accessible unfinished spaces at conditioned surfaces.

### 18.10.3 The home inspector is not required to disturb insulation.

#### ***(Break in Continuity Within Section)***

## 18.12 General limitations.

### 18.12.1 The home inspector is not required to perform any action or make any determination not specifically stated in these Regulations.

### 18.12.2 Inspections performed in accordance with these Regulations are not technically exhaustive and are not required to identify:

- 18.12.2.1 Concealed conditions, latent defects or consequential damage(s).
- 18.12.2.2 Cosmetic imperfections that do not significantly affect a component's performance of its intended function.

## 18.13 General exclusions.

### 18.13.1 Home inspectors are not required to determine:

- 18.13.1.1 Conditions of systems or components that are not readily accessible.
- 18.13.1.2 Remaining life expectancy of any system or component.
- 18.13.1.3 Strength, adequacy, effectiveness, or efficiency of any system or component.
- 18.13.1.4 The causes of any condition or deficiency.
- 18.13.1.5 Methods, materials, or costs of corrections.
- 18.13.1.6 Future conditions, including but not limited to failure of systems and components.
- 18.13.1.7 The suitability of the property for any specialized use.
- 18.13.1.8 Compliance of systems and components with regulatory past and present requirements and guidelines (codes, regulations, laws, ordinances, specifications, installation and maintenance instructions, use and care guides, etc.)
- 18.13.1.9 Market value of the property or its marketability.
- 18.13.1.10 The advisability of purchase of the property.
- 18.13.1.11 The presence of potentially hazardous plants, or animals, or other life forms and substances that may be hazardous or harmful to humans including, but not limited to, wood destroying organisms or insects or diseases harmful to humans including molds or mold-like substances.
- 18.13.1.12 The presence of any environmental hazards including, but not limited to, allergens, toxins, carcinogens, electromagnetic radiation, radioactive substances, noise, and contaminants in the building materials, soil, water, or air.
- 18.13.1.13 The effectiveness of any system installed or method utilized to control or remove suspected hazardous substances plants, animals and environmental hazards.
- 18.13.1.14 Operating costs of systems or and components.
- 18.13.1.15 Acoustical properties of any system or component.
- 18.13.1.16 Soil conditions relating to geotechnical or hydrologic specialties.
- 18.13.1.17 Whether items, materials, conditions and components are subject to recall, controversy, litigation, product liability and other adverse claims and conditions.

### 18.13.2 Home inspectors are not required to offer or perform:

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- 18.13.2.1 Any act or service contrary to law or government regulation.
  - 18.13.2.2 Engineering, architectural, contracting or surveying services or to confirm or to evaluate such services performed by others.
  - 18.13.2.3 Any trade or any professional service other than home inspection.
  - 18.13.3 Home inspectors are not required to operate:
    - 18.13.3.1 Any system or component that is shut down or otherwise inoperable.
    - 18.13.3.2 Any system or component that does not respond to normal operating controls.
    - 18.13.3.3 Shut-off valves or manual stop valves
  - 18.13.4 Home inspectors are not required to enter or traverse:
    - 18.13.4.1 Any area that will, in the opinion of the licensee, likely be dangerous to the licensee or other persons or damage the property or its systems or components.
    - 18.13.4.2 Under-floor crawl spaces ~~or attics that are not readily accessible~~ that have less than 24 inches of vertical clearance between components and the ground or that have an access opening smaller than 16 inches by 24 inches.
    - 18.13.4.3 Attic load bearing components that are concealed by insulation or by other materials.
  - 18.13.5 Home inspectors are not required to inspect:
    - 18.13.5.1 Underground items including but not limited to underground storage tanks or other underground indications of their presence, whether abandoned or active.
    - 18.13.5.2 Items that are not installed.
    - 18.13.5.3 Installed decorative items.
    - 18.13.5.4 Items that are not entered in accordance with section 18.13.4.
    - 18.13.5.5 Detached structures other than residential garages and carports.
    - 18.13.5.6 Common elements or common areas in multi-unit housing, such as condominium properties or cooperative housing.
    - 18.13.5.7 Every occurrence of multiple similar components.
    - 18.13.5.8 Outdoor cooking appliances.
  - 18.13.6 Home inspectors are not required to:
    - 18.13.6.1 Perform any procedure or operation that will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components.
    - 18.13.6.2 Describe or report on any system or component that is not included in these Regulations and was not inspected.
    - 18.13.6.3 Move personal property, furniture, equipment, plants, soil, snow, ice, or debris.
    - 18.13.6.4 Dismantle any system or component, except as specifically required by these Regulations.
    - 18.13.6.5 Reset, reprogram or otherwise adjust devices affected by inspection required by this Standard.
    - 18.13.6.6 Ignite or extinguish fires, pilot lights, burners and other open flames that require manual ignition.
    - 18.13.6.7 Probe surfaces that would be damaged or when no deterioration is visible or presumed to exist.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**4100 Board of Home Inspectors**

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# PROPOSED REGULATIONS

## DIVISION OF PROFESSIONAL REGULATION

### Board of Examiners of Nursing Home Administrators

Statutory Authority: 24 Delaware Code, Section 5206(1) (24 **Del.C.** §5206(1))  
24 **DE Admin. Code** 5200

#### PUBLIC NOTICE

#### 5200 Board of Examiners of Nursing Home Administrators

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board will hold a public hearing on the proposed rule change on May 13, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sheryl Paquette, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.

#### 5200 Board of Examiners of Nursing Home Administrators

#### *(Break in Continuity of Sections)*

#### 2.0 Application for Licensure by Examination

- 2.1 Applications shall be made in writing on forms provided by the Board.
- 2.2 To obtain licensure, applicants must meet the educational and experience requirements including completion of a program that the National Association of Long Term Care Administrator Boards (NAB) has approved, such as the Institute for Continuing Education & Research 120 hour program, University of North Carolina at Chapel Hill, long term care education, St. Joseph's College of Maine Nursing Home and Assisted Living Administration or York College of Pennsylvania 120 hour program.
- 2.2.1 Applicants who have completed a baccalaureate or graduate degree from an accredited college or university with a major in long term care administration or the equivalent thereof are not required to complete the NAB program set forth in regulation 2.2.
- 2.3 Applicants ~~and~~ must pass the National Association of Boards ("NAB") examination.
- 2.34 Applicants must obtain Board approval before they may take the NAB examination. To obtain Board approval, applicants must:
  - 2.34.1 Submit satisfactory evidence of having met one of the educational requirements under Section 5209(a)(1) of Title 24 of the **Delaware Code**, and
  - 2.34.2 Submit a plan to complete the Administrator-In-Training ("AIT") program that corresponds with their education in accordance with regulation section 3.0, and
  - 2.34.3 Identify the applicant's preferred Preceptors.
- 2.45 If the Board is satisfied that the applicant has completed the requisite education and approves the applicant's AIT plan and preferred Preceptors, the applicant shall be approved to begin their AIT program under the direct supervision of the approved Preceptors.
  - 2.45.1 Approved applicants shall begin their AIT program immediately.
  - 2.45.2 Applicants not approved by the Board may be given the opportunity to rectify deficiencies in their applications before denial of their application is proposed.
- 2.56 Applicants approved to take the examination will be granted licensure once the Board receives confirmation that the applicant has achieved a passing score of 75% or more on the National Association of Boards ("NAB") examination.

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- 2.56.1 Applicants who do not pass the first examination may retake the examination within the following three months after the date of the exam without further Board approval.
  - 2.56.2 Applicants who do not pass the second examination may retake the examination within the following six months after the date of the exam without further Board approval.
  - 2.56.3 Applicants who do not pass the third examination must obtain Board approval each time they wish to retake the examination. The Board will approve these applicants to retake the examination only after they complete 40 additional hours working under the direct supervision of a Delaware-licensed nursing home administrator in a skilled nursing facility previously approved by the Board.

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

**5200 Board of Examiners of Nursing Home Administrators**

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## Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

## Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**

Statutory Authority: 25 Delaware Code, Section 7012 (25 Del.C. §7012)

1 DE Admin. Code 201

## ORDER

**201 Delaware Manufactured Home Relocation Trust Fund Regulations**

AND NOW, this 6th day of March, 2014, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the Authority has proposed for adoption proposed revisions to the Authority's Regulations relating to maximum benefit payments to Landlords and Tenants. The proposed revisions would set the maximum payment available to a landlord for removal and demolition costs incurred by the Landlord in removing homes that have been abandoned or cannot be relocated. The maximum benefit available to a Landlord for a single section home would be \$3,000.00 and for a multi-section home the maximum benefit would be \$5,000.00. The proposed revisions would also increase the maximum relocation payment available to a Tenant from \$4,000.00 to \$8,000.00 for a single section home and from \$8,000.00 to \$12,000.00 for a multi-section home. Finally, the proposed revisions would set the maximum payment to a Tenant for a non-relocatable home at \$5,000.00 for a single section home and \$9,000.00 for a multi-section home.

2. The proposed regulations were published in the Delaware *Register of Regulations* on January 1, 2014, and were also placed on the Authority's web site. Written comments from the public were invited. No written comments were submitted.

3. The Authority considered the proposed revisions at its regularly scheduled Board meeting held on March 6, 2014. At its March 6, 2014 Board meeting, the Authority adopted a resolution pursuant to which the Authority adopted the proposed revisions as a final regulation.

4. For the reasons set forth herein, the Authority, by this Order, adopts as final regulations the Regulations

attached to this Order as Exhibit A.

5. No members of the public voiced any opposition to the proposed revisions relating to maximum payments.

6. The Authority believes that the maximum benefits set forth in the proposed revisions are reasonable under the circumstances. The proposed revisions would increase the maximum benefits available to landlords and tenants to help subsidize the costs of relocating manufactured homes, or in the case of homes that have been abandoned or cannot be relocated, subsidize the costs of removing and demolishing the homes. As authorized by the Authority's enabling statute, the proposed revisions would also, for the first time, set the maximum payment available to tenants for homes that are determined to be non-relocatable. The Authority believes that the proposed maximum benefit is reasonable and will protect the solvency of the Trust Fund. While the Authority might prefer in all cases to reimburse dislocated tenants for all reasonable expenses incurred by a tenant in relocating and/or abandoning the tenant's manufactured home if the home cannot be relocated, the Authority recognizes its responsibility to administer the Trust Fund in a fiscally responsible manner so that all applicants that come before the Authority, both now and in the future, will be treated fairly. If the maximum payment is set too high, in the future the Trust Fund may not have adequate funds in place to provide any benefits to future tenants.

NOW THEREFORE, for the reasons set forth above, IT IS ORDERED:

1. That the changes to the "Delaware Manufactured Home Relocation Trust Fund Regulations" attached hereto as Exhibit A are adopted pursuant to 25 **Del.C.** §7011, et. seq. The changes noted on the Proposed Regulations adopted herein shall become effective ten (10) days after their publication in the Delaware *Register of Regulations*.

2. That pursuant to 29 **Del.C.** §1134, the Authority shall transmit a copy of this Order and the Regulations to the Delaware Registrar of Regulations for publication in the next issue of the Delaware *Register of Regulations*.

3. That a copy of this Order and the Regulations shall be mailed to each entity or persons that previously filed written comments to the Proposed Regulations and to each person who has made a timely request for advance notice of the Authority's regulation making proceedings.

4. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

5. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson, March 6, 2014

Andy Strine, Board Member

George Meldrum, Board Member

William Dunn, Board Member

John Morris, Board Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 678 (17 DE Reg. 678). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[201 Delaware Manufactured Home Relocation Trust Fund Regulations](#)**

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## DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 Delaware Code, Section 7011 (25 **Del.C.** §7011)

### ORDER

#### **[202 Rent Increase Dispute Resolution Procedures](#)**

AND NOW, this 6th day of March, 2014, the Delaware Manufactured Home Relocation Authority (the

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"Authority"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware *Register of Regulations*:

1. Pursuant to its statutory authority, the Authority has proposed for adoption a comprehensive set of rules of practice and procedure (the "Proposed Rules") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 **Del.C.** §7043.

2. The Rent Justification Dispute Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Due to time restraints, the Authority adopted emergency regulations to provide manufactured home community owners and tenants with guidelines and procedures to be used pending the adoption of final rules by the Authority.

3. The Proposed Rules were published in the Delaware *Register of Regulations* on February 1, 2014, and were also placed on the Authority's web site. Written comments from the public were invited. Several written comments were submitted.

4. The Authority considered the Proposed Rules at its regularly scheduled Board meeting held on March 6, 2014. At its March 6, 2014 Board meeting, the Authority adopted a resolution pursuant to which the Authority adopted the Proposed Rules as a final set of guidelines and procedures to be followed in the administration of the Rent Justification Procedures.

5. For the reasons set forth herein, the Authority, by this Order, adopts as final the guidelines and procedures attached to this Order as Exhibit A.

6. Initially, the Authority would note that its role in the administration of rent disputes is, by statute, limited to implementing and overseeing the process by which rent disputes are resolved, and, to the extent applicable, funding direct arbitration costs in excess of the arbitration fees paid by participants in the arbitration process. Decisions regarding the propriety of any proposed rent increase will be made by the arbitrators, whose decisions are subject to appeal to and review by the Delaware Superior Court. The guidelines and procedures adopted herein will hopefully provide a road map for resolving rent increase disputes. The Authority does not consider it appropriate to attempt to micro-manage the arbitration process.

7. By statute, it is the responsibility of the Authority to designate an arbitrator when a request for arbitration has been made. As noted above, written comments were submitted to the Authority addressing some of the Proposed Rules. Several comments were directed to the qualifications of an arbitrator. One comment suggested that an arbitrator must "come from a different county than the one in which the case is involved", presumably to prevent bias. The Authority does not accept this recommendation. The statute does not require this, and more importantly, the Proposed Rules require each appointed arbitrator to make an initial determination as to whether or not there is any conflict of interest or other matter that would otherwise affect the arbitrator's ability to render an impartial decision. (Rule 7.5).

8. One commentator objected to the rule that would allow parties to designate a specific arbitrator. See Rule 7.4. The Authority does not accept this recommendation. If *all* of the parties have agreed in writing to the appointment of a specific Delaware attorney to act as arbitrator, the Authority should respect that decision and appoint that person as the arbitrator. Once appointed, the arbitrator would still be required to make an initial determination as to whether there exist any facts that would prevent the appointed arbitrator from making an impartial decision.

9. The Proposed Rules provide guidance on who should be allowed to attend an arbitration hearing, given the private nature of the arbitration process. See Rule 7.19. One commentator suggested that if a "landowner representative from the [Authority] attends an arbitration hearing, then a "DMHOA Representative" should attend the arbitration. Rule 7.19 provides that at any arbitration hearing, "at the option of the Authority, representative(s) of the Authority may attend the hearing. It should be noted that if a representative of the Authority does attend a hearing, in doing so, his or her role is by necessity limited to that of an observer. The Authority does not consider it necessary to dictate by rule what Board member, if any, should attend an arbitration hearing.

10. The Proposed Rules provide in part that the appeal process dictated by statute will be subject to Rule 72 of the Delaware Superior Court Rules of Civil Procedure. One commentator stated that any party filing an appeal "should provide a copy of the notice of appeal to the other party". The Authority believes that the notice issues are addressed in Superior Court Civil Rule 72. Rule 72 provides that once an appeal has been filed, the Prothonotary is required to mail copies of the notice of appeal to "all parties to the proceeding below".

11. One commentator recommended that the decisions of arbitrators should be available to other arbitrators. The Authority, recognizing the private nature of the arbitration process, is not inclined to adopt a blanket rule on the distribution of arbitration decisions, and believes this issue should be addressed on a case by case basis.

12. Several comments were related to the issue of Home Owner Association representation of tenants. For example, under what circumstances does a Home Owner Association of a manufactured home community represent tenants who are not members of the Association? How are members of the Association who do not want the Association to represent his or her interest treated? The Authority recognizes the importance of knowing, at the outset of any arbitration hearing, who is a "party" to the arbitration process, and who will be representing each party. The Authority believes that this decision is better left with the arbitrator, who will be better equipped to address this issue on a case by case basis. The Authority would note that a community owner is required to give written notice to "each affected homeowner" of any increase in lot rent. Upon receipt of this notice, any "affected homeowner" can decide what steps, if any, he or she wants to take in response to the proposed increase in rent.

13. One commentator raised the issue of how non-members of a Home Owners Association are to be notified of any meeting. The intent of the rent dispute process is for all affected homeowners to have an opportunity to meet and confer with a community owner in an effort to resolve rent increase disputes. The Proposed Rules contemplate that the initial meeting will be at the time, date, and place set forth in the community owner's initial notice, "unless the Authority determines, based on input from the parties, that said time, date or place should be changed..." Rule 5.0. Accordingly, all affected homeowners, whether or not a member of a Home Owners Association will receive the initial notice of the time, date, and place of the meeting. It is only when that time, date, or place (based on "input from the parties") is changed, will there be a need to send out an additional notice. The Authority, and perhaps the community owner, may or may not know whether or not all affected homeowners are members of a Home Owners Association. The Authority will revise Rule 5.0 by deleting the last two sentences of Rule 5.0 and substituting in lieu thereof the following: "Notice of the time, date and place of the meeting shall be provided to the parties by the community owner". The community owner is in a better position to notify the "affected homeowners" and any Home Owners Association of any change in the meeting time, date or place. The Authority does not consider this change to be substantive in nature and is consistent with the intent of the rent dispute process. Accordingly, no re-proposing of this change will be required.

14. Written comments were submitted by the following: (a) February 21, 2014 comments of Robert W. Tunnell, III, President of the First State Manufactured Housing Association; (b) February 14, 2014 and February 17, 2014 comments of Robert Geisweidt; (c) January 14, 2014 comments of Patricia Rice; (d) January 30, 2014 comments of Brian Posey; and (e) February 27, 2014 comments of Mary K. Eggers, Bill Kovatch, Jill Fuchs, and Dohn Harshbarger. The Authority has considered and reviewed each of the above comments in making its final decision in this matter. In closing, the Authority would note its limited role in the rent justification process. The procedures adopted herein will hopefully provide some guidance to the participants so that the process will work efficiently. As the Authority gains more experience from real cases, the Authority will endeavor to improve upon the procedures and guidelines set forth herein.

NOW THEREFORE, for the reasons set forth above, IT IS ORDERED:

1. That the "Delaware Manufactured Home Relocation Trust Fund Rent Increase Dispute Resolution Procedures" attached hereto as Exhibit A are adopted as final regulations pursuant to 25 **Del.C.** §7011, et. seq. The Proposed Procedures adopted herein shall become effective ten (10) days after their publication in the Delaware *Register of Regulations*.

2. That pursuant to 29 **Del.C.** §1134, the Authority shall transmit a copy of this Order and the Procedures to the Delaware Registrar of Regulations for publication in the next issue of the Delaware *Register of Regulations*.

3. That a copy of this Order and the Procedures shall be mailed to each entity or persons that previously filed written comments to the Proposed Procedures and to each person who has made a timely request for advance notice of the Authority's regulation making proceedings.

4. That the Authority reserves the right to hereafter alter, amend, or waive the Procedures adopted herein to the extent that the same may be allowed by law.

5. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson, March 6, 2014

Andy Strine, Board Member

George Meldrum, Board Member

William Dunn, Board Member

John Morris, Board Member

# FINAL REGULATIONS

## 202 Rent Increase Dispute Resolution Procedures

(Authorization: Section 7011)

*(Break in Continuity of Sections)*

### **5.0 Scheduling of Meetings When Proposed Rent Increase Exceeds CPI-U**

When a proposed rent increase exceeds the CPI-U, the Authority shall schedule a meeting between the parties at the time, date, and place set forth in the community owner's initial notice, unless the Authority determines, based on input from the parties, that said time, date, or place should be changed, in which case the Authority, in its sole discretion, shall schedule the meeting at a time and place to be held no later than thirty (30) days after the mailing of the notice of the rent increase. Unless otherwise agreed to by all of the parties, the meeting shall take place in the county in which the manufactured home community is located. Notice of the time, date and place of the meeting shall be provided to the ~~[community owner and the HOA. If no HOA exists, notice of the time, date, and place of the meeting shall be provided to the affected leaseholders, or their designated representative, parties]~~ by the community owner.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 804 (17 DE Reg. 804). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

**202 Rent Increase Dispute Resolution Procedures**

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## **DELAWARE STATE FIRE PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 Del.C. §6604(1))  
1 DE Admin. Code 710

### ORDER

#### **710 Ambulance Service Regulations**

#### **I. Summary of the Evidence and Information Submitted**

The Delaware State Fire Prevention Commission ("Commission") has adopted a regulation amending the current 710 Ambulance Service Regulations in Title 1 of the Administrative Code by striking the words marked by strike through and adding the words underlined in the revised 710 Ambulance Service Regulations as it appears below. The Commission held a public hearing at which members of the public were permitted to present comments on the proposed regulation on December 17, 2013 at 7:00 p.m. in the Delaware State Fire Prevention Chamber at the Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. No written comments were submitted by members of the public in the 15 days following the public hearing.

#### **II. Findings of Facts**

The Commission finds that it is appropriate to revise the current 710 Ambulance Service Regulations in Title 1 of the Administrative Code by striking the words marked by strike through and adding the words underlined in the revised 710 Ambulance Service Regulations as it appears below.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Commission concludes that it is appropriate to amend Title 1 of the Administrative Code by striking the words marked by strike through and adding the words underlined in the revised 710 Ambulance Service Regulations as it appears below.

## IV. Text and Citation

The text of existing 710 Ambulance Service Regulation in Title 1 of the Administrative Code is amended by striking the words marked by strike through and adding the words underlined in the revised 710 Ambulance Service Regulations as it appears below. Said regulation shall be cited as 1 **DE Admin. Code** 710 Ambulance Service Regulations.

## V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

### IT IS SO ORDERED.

Delaware State Fire Prevention Commission

Approved as of January 21, 2014.

## 710 Ambulance Service Regulations

*(Break in Continuity of Sections)*

### 3.0 Definitions

For the purpose of this Regulation the following definitions are used:

*(Break in Continuity Within Section)*

**“National Registry Of Emergency Medical Technicians” or “(NREMT)”** - means the nationally recognized organization for the testing and registering of persons who have completed ~~[United States Department of Transportation curriculum~~ **the most current National Highway Traffic Safety Administration's (NHTSA) National EMS Education Standards**], paramedic, EMT and EMR courses.

**“National Registered Emergency Medical Technician” ~~—Basic~~ or “(NREMT-B)”** - means a person who completed the ~~United States Department of Transportation~~ most current National Highway Traffic Safety Administration's (NHTSA) National EMS Education Standards curriculum and passed the NREMT examination.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 469 (17 DE Reg. 469). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**710 Ambulance Service Regulations**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §7405 (16 **Del.C.** § 7405)

### ORDER

**Delaware Radiation Control Regulations:  
4465 Part A General Provisions  
4465 Part B Registration of Radiation Source Facilities and Services  
4466 Radiation Technologists/Technicians (Certification)**

### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to amend the State of Delaware Regulations Governing Radiation Control. The DHSS proceedings to amend regulations were initiated pursuant to 29 **Del.C.** §101 and authority as prescribed by 16 **Del.C.** §7405. The regulations amended are shown in the table below.

DE Admin Code No.	Current Delaware Citation	Title
4465	Part A	General Provisions
4465	Part B	Registration of Radiation Source Facilities & Service Providers
4466		Radiation Technologists/Technicians (Certification)

On February 1, 2014 (Volume 17, Issue 8), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 7, 2014, or be presented at a public hearing on February 24, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Radiation Control were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from February 1, 2014 through March 7, 2014. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

The regulation has been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

#### FINDINGS OF FACT:

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Radiation Control are adopted and shall become effective May 11, 2014, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

**\*Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

**Delaware Radiation Control Regulations**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Chapter 79; (7 Del.C., Ch. 79)  
7 DE Admin. Code 103

Secretary's Order No.: 2014-OTS-0003

### 103 Chronic Violator Regulation

Date of Issuance: February 25, 2014

Effective Date of the Amendment: April 1, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### Background and Procedural History

This Order considers proposed regulatory action to repeal 7 DE Admin. Code 103, also known as Delaware's *Chronic Violator Regulation*. In 2012, the *Chronic Violator Regulation* was rendered moot by the passage of legislation (Senate Bill 92) which amended existing state law and eliminated the Department's role as proposing and determining whether a party is a "chronic violator". Under the amended law, DNREC proposes the designation to the Environmental Appeals Board. The most recent changes in the law spell out the process, and thus alleviate the need for the existing regulation. This proposed action is based on a recommendation by the Department of Justice to repeal the regulation in its entirety.

The Department's Office of the Secretary commenced the regulatory development process with Start Action Notice 2013-34. The Department published its initial proposed regulation repeal action in the January 1, 2014 *Delaware Register of Regulations*, and held a public hearing on February 3, 2014. It should be noted that no members of the public attended said hearing.

These proposed regulatory actions were thoroughly vetted by the Department at the aforementioned public hearing on February 3, 2014. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 21, 2014 (Report). The Report recommends certain findings and the adoption of the proposed regulatory actions as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed regulatory actions are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed regulatory actions. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Office of the Secretary fully developed the record to support adoption of these regulatory actions. The adoption of this Order will enable Delaware to streamline its existing regulations by repeal of this now moot regulation, which no longer serves its intended purpose, and to accurately reflect Delaware's most recent changes in state law regarding this process.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed regulatory actions as final;

- 2.) The Department provided adequate public notice of the proposed regulatory actions, and provided the public with an adequate opportunity to comment on the initial proposed actions, including at the public hearing held on February 3, 2014;
- 3.) The Department held a public hearing on February 3, 2014 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended regulatory actions as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will enable Delaware to streamline its existing regulations by repeal of this now moot obsolete regulation, which no longer serves its intended purpose;
- 6.) The recommended regulatory actions should be adopted as final regulatory actions because Delaware will be able to (1) update its existing regulations by removing that which no longer serves its intended purpose; (2) accurately reflect Delaware's most recent changes in state law regarding this process; and, lastly, because (3) the regulation actions are well supported by documents in the record; and
- 7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 693 (17 DE Reg. 693). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**103 Chronic Violator Regulation**

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### DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 **Del.C.**, Ch. 60 and 63)  
7 **DE Admin. Code** 1302

**Secretary's Order No.: 2014-WH-0004**

**1302 Regulations Governing Hazardous Waste**

**Date of Issuance: March 14, 2014**

**Effective Date of the Amendment: April 21, 2014**

#### **I. Background:**

A public hearing was held on Monday, January 27, 2014, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware *Regulations Governing Hazardous Waste* (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

In order to improve flexibility and service to the regulated community, the Department's Solid and Hazardous Waste Management Section ("SHWMS") proposes to add compliance self-certification provisions to Delaware's RGHW. Specifically, Delaware proposes to modify Section 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

To fully vet the Department's proposed amendments to the aforementioned RGHW to the regulated community throughout Delaware, the aforementioned proposed amendments were published in the State of Delaware *Register of Regulations* on January 1, 2014. Additionally, notices of the Department's proposed amendments and upcoming public hearing were published in both the *Delaware State News* and the *News Journal* on December 18, 2013, which encouraged the public to review the proposed amendments on the Department's web page, and to attend DNREC's upcoming public hearing. Accordingly, the Department then held a public hearing on Monday, January 27, 2014, at which time there were no members of the public in attendance, nor were any comments received from the public or the regulated community regarding these proposed amendments. Pursuant to Delaware law, the record was held open for an additional fifteen (15) days immediately following the date of the public hearing, in order to give the public further opportunity to provide comment to DNREC concerning this proposed promulgation. At the time the record formally closed on February 11, 2014, no public comments had been received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on January 27, 2014, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated March 4, 2014, and that Report in its entirety is expressly incorporated herein by reference.

## **II. Findings:**

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's *Regulations Governing Hazardous Waste*, as reflected in the Hearing Officer's Memorandum of March 4, 2014, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C.** Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
5. Promulgation of these proposed amendments would improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs;
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department's proposed regulation, as published in the January 1, 2014 Delaware *Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the Delaware *Register of Regulations*;
8. The Department shall submit the proposed regulation as a final regulation to the Delaware *Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

## **III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated March 4, 2014 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste* be promulgated in final form in the customary manner and established rule-making procedure required by law.

## **IV. Reasons:**

The promulgation of the amendments to the State of Delaware's *Regulations Governing Hazardous Waste* will

improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

It should be noted that the estimated cost to fill out the Checklist is minimal. If a business generates hazardous waste, then there must already be an employee who is responsible for managing that hazardous waste. This same individual would ideally be the person responsible for filling out the Self-Certification Checklist. Because the Department will provide any assistance necessary in filling out the form, there is no need for a business to hire an outside consultant to comply with this new regulation. It should also be noted that businesses would not be required to take any other measures or investments to comply with this new regulation.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del. C.** Chapters 60 and 63.

Collin P. O'Mara, Secretary

### 1302 Regulations Governing Hazardous Waste

ID #	Description
1	Self-Certification provisions0

### **AMENDMENT: Self-Certification Provisions**

Delaware is proposing to modify 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the Solid and Hazardous Waste Management Section SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

#### **Section 262.43 Additional Reporting.**

(a) The Secretary, as he deems necessary under 7 **Del.C.** §6305(a)(10), may require generators to furnish additional reports concerning the quantities, management, and disposition of wastes identified or listed in Part 261.

(b) Any generator of hazardous waste who receives a Self-Certification Checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department.

(1) The Department shall provide generators a reasonable amount of time to complete and return a checklist. At a minimum, the generator shall have 14 days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department.

(2) The Self-Certification Checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

"I, the undersigned representative, certify that I have personally examined and am familiar with the information contained in this submittal. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects. I am fully authorized to make this certification on behalf of this generator. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 4120A (11 Del.C. §4120A)

### ORDER

#### 1100 Delaware Sex Offender Management Board

#### NATURE OF THE PROCEEDINGS

The Delaware Department of Safety and Homeland Security's Sex Offender Management Board (SOMB) initiated proceedings to provide notice to the public of its intent to establish qualifications for those individuals who will be providing sex-offense specific treatment to convicted sex offenders. The Department's proceedings to establish regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by Title 11 of the **Delaware Code**, Chapter 41, Section 20A.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposal described below establishes qualifications for those individuals who will be providing sex-offense specific treatment to convicted sex offenders.

##### Statutory Authority

- 1 **Delaware Code**, Section 4120A (11 Del.C. §4120A)

##### Summary of Proposal

The proposal described below establishes qualifications for those individuals who will be providing sex-offense specific treatment to convicted sex offenders.

##### Background

Effective July 5, 2007 the Delaware General Assembly passed legislation that created a Sex Offender Management Board. The Board is tasked with developing standards and guidelines for the evaluation, identification, classification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system. The paramount purpose and goal of the Sex Offender Management Board is to maximize community safety and to ensure that sex offenders are not within the community without comprehensive treatment, constant supervision, and behavioral monitoring.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DSHS/SOMB received no public comments regarding the proposed regulation.

##### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to establish qualifications for those individuals, who will be providing sex-offense specific treatment to convicted sex offenders, is adopted and shall be effective April 11, 2014.

Lewis D. Schiliro, Secretary, Department of Safety and Homeland Security, March 3, 2014

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2013 issue of the *Register* at page 933 (16 DE Reg. 933). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1100 Delaware Sex Offender Management Board**

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))  
24 **DE Admin. Code** 2500

**ORDER**

**2500 Board of Pharmacy**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 19, 2014 at a scheduled meeting of the Delaware Board of Pharmacy to receive comments regarding the Board's proposed revisions to its rules and regulations.

The Delaware Board of Pharmacy has proposed revisions to its rules and regulations. The rules pertaining to patient counseling are amended to provide that the pharmacist, or registered intern or pharmacy student, shall provide counseling to a new patient, an existing patient with a new prescription, or a patient with a prescription that has been modified. Rule 12.0, addressing health care facilities, has been revised to ensure appropriate oversight by a pharmacist where the pharmacist is providing contractual pharmaceutical services in a health care facility setting. Finally, Rule 17.0, listing the crimes substantially related to the practice of pharmacy, has been expanded to encompass certain sexual offenses and crimes against children.

A public hearing was held on February 19, 2014, with deliberations conducted on March 19, 2014. The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 17, Issue 7, on January 1, 2014. Notice of the February 19, 2014 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was March 6, 2014, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 19, 2014.

**Summary of the Evidence and Information Submitted**

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.

Board Exhibit 2: *Delaware State News* Affidavit of Publication.

The Board received no written or public comment.

**Findings of Fact and Conclusions**

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations.

Pursuant to 24 **Del.C.** §2506(a)(1), the Board has the statutory authority to promulgate rules and regulations. The proposed revisions will ensure that patients receive counseling when appropriate. Further, the amendments clarify the necessary oversight where the pharmacist is providing contractual pharmaceutical services in a health care setting. Finally, expansion of the substantially related crimes list will permit the Board to address circumstances where applicants have convictions for certain sexual offenses and crimes against children. The Board concludes that adoption of the rules and regulations as amended advances professional practice standards and is in the best interest of the public.

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## Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

## Text and Citation

The text of the revised rules and regulations remains as published in the *Register of Regulations*, Volume 17, Issue 7 on January 1, 2014.

**IT IS SO ORDERED** this 19th day of March, 2014 by the Delaware Board of Pharmacy.

Joli Martini, R.Ph., PharmD, Professional Member,      Tejal Patel, R.Ph., PharmD, Professional Member  
President

Kimberly Robbins, R.Ph., Professional Member, Vice      Kenneth Sellers, Public Member  
President

Susan Esposito, R.Ph., Professional Member      Bonnie Wallner, R.Ph., Professional Member

Jay Galloway, Public Member      Sandra Zaragoza, R.Ph., Professional Member

Matthew Maher, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 709 (17 DE Reg. 709). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**2500 Board of Pharmacy**

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 **Del.C.** §3606(a)(1))  
24 **DE Admin. Code** 3600

## ORDER

**3600 Board of Geologists**

## NATURE AND STAGE OF THE PROCEEDINGS

On November 1, 2013, the Delaware Board of Geologists published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 16, Issue 4. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 13, 2013 at a regularly scheduled meeting of the Delaware Board of Geologists to receive verbal comments regarding the Board's proposed amendments to its regulations.

## SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

**Board Exhibit 1** -Affidavit of publication of the public hearing notice in the *News Journal*; and

**Board Exhibit 2** - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on December 13, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

# FINAL REGULATIONS

## FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §3606(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendment to Rule 5 seeks to add rules regarding inactive status of a geology license and the requirements to reactivate a license from inactive status. Additionally, the rules amend the use of the term expiration to termination to create continuity within the geology regulations as well as within the Division of Professional Regulation.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

## DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations as proposed, to be effective 10 days following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

**IT IS SO ORDERED this 14th day of March, 2014.**

### BY THE BOARD OF GEOLOGISTS

David Reinhold, PG, President

Scott Blaier, PG

Patricia Ennis, Public Member

Maureene LaFate, Public Member

Judith Nicholas, Public Member

Douglas Rambo, PG, Vice President

William "Sandy" Schenck, PG, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 494 (17 DE Reg. 494). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3600 Board of Geologists**

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### DIVISION OF PROFESSIONAL REGULATION Controlled Substance Advisory Committee

Statutory Authority: 16 Delaware Code, Section 4731 (16 **Del.C.** §4731)

## ORDER

### Uniform Controlled Substances Act Regulations

Pursuant to 29 **Del.C.** §10118, the Secretary of State issues this Order adopting proposed amendments to the Delaware Controlled Substance Advisory Committee's Rules and Regulations. Following notice and public hearings on May 29, 2013 and October 23, 2013, the Secretary of State makes the following findings and conclusions:

## SUMMARY OF THE EVIDENCE

### May 29, 2013 Public Hearing

On May 1, 2013, the Committee published proposed revisions to its Rules and Regulations in the *Register of Regulations*, Volume 16, Issue 11. The Committee also posted public notice of the proposed amendments in the *Delaware News Journal* and the *Delaware State News*.

Exhibits 1 and 2: In the proposed amendments, the Rules and Regulations are re-organized for greater clarity

and expanded to incorporate pertinent provisions from Chapter 47 of Title 16. The Rules pertaining to security in dispensing, now set forth in Rule 7.0, are amended for greater public protection. Rule 8.0 is added to address dispensing by practitioners.

At the public hearing on May 29, 2013, David W. Dryden, Director of the Office of Controlled Substances, stated that he believes that the proposed changes will be beneficial to the regulation of controlled substances and increase security standards. Further, a number of the changes reflect current federal requirements. The Committee received no other written or public comment. Pursuant to 29 **Del.C.** §10118(a), the public comment period was held open for another fifteen days to receive written comments. No written comments were received during this time period.

The Committee deliberated on the proposed amendments to the Rules and Regulations at its scheduled meeting on June 26, 2013. Having received comment by Mr. Dryden in support of the amendments, and no other public comment, the Committee finds there is no reason to change the Rules and Regulations as proposed. The Committee recommends to the Secretary of State that the Rules and Regulations changes be accepted as proposed and published in the *Register of Regulations* on May 1, 2013.

### **October 23, 2013 Public Hearing**

On August 1, 2013, the Committee published proposed revisions to its Rules and Regulations in the *Register of Regulations*, Volume 17, Issue 2. The public hearing was re-noticed in the October 2, 2013 *Register of Regulations*, Volume 17, Issue 4. Rule 2.0 is revised to add the requirement that all practitioners registered under Chapter 47 of Title 16 of the Delaware Code must complete continuing education in order to qualify for continued registration. In the final version of the revised Rules and Regulations, attached hereto as Exhibit A, the continuing education requirement is set forth in Rule 3.0. The amendment will enhance practitioner competence for greater protection of the public. The Committee also posted public notice of the proposed amendments in the *Delaware News Journal* and the *Delaware State News*. Exhibits 1 and 2. The public hearing on the proposed revisions was held on October 23, 2013. The Committee received no written or public comment. Pursuant to 29 **Del.C.** §10118(a), the public comment period was held open for another fifteen days to receive written comments. No written comments were received during this time period.

The Committee deliberated on the proposed amendments to the Rules and Regulations at its scheduled meeting on December 4, 2013. Having received no public or written comment, the Committee found there was no reason to change the Rules and Regulations as proposed. The Committee recommends to the Secretary of State that the Rules and Regulations changes be accepted as originally proposed and published in the *Register of Regulations* on August 1, 2013.

### **Findings of Fact and Conclusions of Law**

The public was given notice and an opportunity to provide the Committee with comments in writing and by testimony at the public hearings on the proposed amendments to the Committee's Rules and Regulations.

Pursuant to 29 **Del.C.** §4731, the Secretary of State has the statutory authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State.

The Committee found that the proposed revisions, published on May 1, 2013, were necessary for increased clarity and consistency with the enabling statute. Further, amendments to the Rules addressing dispensing would serve to enhance public protection. The Committee further found that the proposed revisions, published August 1, 2013, requiring continuing education for practitioners, would enhance practitioner competence with the result of greater public protection. The Committee, therefore, recommended that the rules and regulations be accepted as proposed.

The Committee's Rules and Regulations may be changed without prior publication if such Rules and Regulations conflict with the Committee's enabling statute. Due to amendments to Chapter 47 of Title 16 of the Delaware Code, certain Rules, as published May 1, 2013, must be amended. Specifically, pursuant to 16 **Del.C.** §4739A and §4798, the following Rules shall be amended: Rule 8.1 is revised to reference a 72 hour supply, rather than a 5 day supply, of schedule II through V controlled substances, and Rules 8.1.2, 8.1.3 and 8.2.13 are stricken.

### **Decision and Order Concerning the Regulations**

The Secretary of State hereby accepts the changes to the Rules and Regulations as set forth in Exhibit A,

attached hereto. These rules and regulations will become effective ten days after their publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. §10118(g).

IT IS SO ORDERED this 20<sup>th</sup> day of February, 2014.

Jeffrey Bullock  
Secretary of State

**\*Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

**Uniform Controlled Substances Act Regulations**

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**OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), and 2906(e);  
29 Delaware Code, Section 10113(a)

(5 Del.C. §§121(b), 2112, 2210(e), and 2906(e); 29 Del.C. §10113(a))

5 DE Admin.Code 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206,  
2901, 2902, 2903, and 2904

**ORDER**

**Adopting Amended State Bank Commissioner Regulations 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206, 2901, 2902, 2903, and 2904**

IT IS HEREBY ORDERED, this 11<sup>th</sup> day of March, 2014, that amended Regulations 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206, 2901, 2902, 2903, and 2904 are adopted as Regulations of the State Bank Commissioner. These amended Regulations were published in the February 1, 2014 edition of the Delaware *Register of Regulations* and are incorporated herein by reference. The effective date of each of these Regulations is April 11, 2014. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the February 1, 2014 issue of the Delaware *Register of Regulations*. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before March 5, 2014. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and that copies were available upon request.

2. No written comments concerning the proposed amended Regulations were received on or before March 5, 2014.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 2101, 2102, 2103, 2104, 2105, 2106, 2201, 2202, 2203, 2204, 2205, 2206, 2901, 2902, 2903, and 2904 as proposed.

Robert A. Glen  
State Bank Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2014 issue of the *Register* at page 832 (17 DE Reg. 832). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**Amended State Bank Commissioner Regulations**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MANAGEMENT SERVICES

Statutory Authority: 16 Delaware Code, Sections 210-218 (16 Del.C. §§210-218)

### GENERAL NOTICE

#### **Annual Grant Application Under Part C of the Individuals with Disabilities Education Improvement Act of 2004**

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. The application will be available until April 21, 2014.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application or e-mail [Inita.joyner@state.de.us](mailto:Inita.joyner@state.de.us). Send your written comments to Part C/Birth to Three, DMS/DHSS, 2<sup>nd</sup> floor, Main Building, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION****PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to amend Commission Regulation 8.8 relating to the Jockey Fee by adding a new regulation 8.8.3.

A copy of the proposed regulations is being published in the April 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2014. Written materials submitted will be available for inspection at the above address.

**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, April 17, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****1915(i) Home and Community-Based Services Waiver Renewal Application**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR 447.205, 42 CFR 441.304 and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / Division of Developmental Disabilities Services (DDDS) is seeking public comments on the 1915(c) Home and Community-Based Services Waiver (HCBS) waiver renewal application.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid Coverage of Prescribed Drugs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state

plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding prescribed drug coverage, specifically, *changes to the coverage of barbiturates, benzodiazepines and agents used to promote smoking cessation*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4203 Cancer Treatment Program**

Health Promotion & Disease Prevention, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the 4203 State of Delaware Cancer Treatment Program regulation.

The proposed regulation updates the technical, financial, and residency eligibility requirements for the Delaware Cancer Treatment program.

On April 1, 2014, the Department plans to publish proposed amendments to the 4203 State of Delaware Cancer Treatment Program regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the April 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Comprehensive Cancer Control Program at 302-744-1032.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulation must submit same to Deborah Harvey by 4:30 p.m. on Wednesday, April 30, 2014 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4468 Delivery of Hospice Services**

The Office of Health Facilities Licensing and Certification, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, has proposed amendments to the State of Delaware 4468 Delivery of Hospice Services regulation.

Senate Bill 119, signed into law in June 2013, requires the Department of Health and Social Services to establish and implement uniform protocol for all hospice programs operating in Delaware for the safe disposal of unused medication upon the death or discharge of an in-home hospice patient. The proposed amendments add to the existing regulation a section 6.5.5 and an Appendix A: *Protocol Regarding the Safe Disposal of Unused Prescription Medication Following the Death of an In-Home Hospice Patient*.

On April 1, 2014, the Department plans to publish proposed amendments to the 4468 Delivery of Hospice Services regulation and hold them out for public comment per Delaware law.

Copies of the proposed regulation are available for review in the April 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 283-7220.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning

the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Wednesday, April 30, 2014 at:

Deborah Harvey  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [Deborah.Harvey@state.de.us](mailto:Deborah.Harvey@state.de.us)  
Phone: (302) 744-4700

## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF WATER**

#### **REGISTER NOTICE**

#### **7401 Surface Water Quality Standards**

The amended Surface Water Quality Standards presented here are the result of a review of the Standards that started with Start Action Notice #2013-32 in 2013. Department staff reviewed factors affecting human health criteria, Environmental Protection Agency (EPA) documents, staff recommendations, and documents related to site-specific criteria for the tidal Murderkill River. A markup of proposed amendments to the Surface Water Quality Standards was prepared for the Register. A public hearing is scheduled for 5:00 PM, April 29, 2014 in the DNREC Auditorium, with comments accepted until May 16, 2014. To ensure compliance with the Clean Water Act and EPA regulations, the State of Delaware, in accordance with 7 **Del.C.** §6010, will amend the State of Delaware Surface Water Quality Standards.

A public hearing is scheduled for 5:00 PM, on April 29, 2014 in the DNREC Auditorium, with public comments accepted until May 16, 2014.

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed revisions to the regulations please contact David Wolanski, Watershed Assessment and Management Section at (302) 739-9939 or by email at [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us).

The procedures for adopting regulations are established in 7 **Del.C.** §6006 and 29 **Del.C.** Chapter 101. Inquiries regarding comments should be directed to Robert Haynes at (302) 739-9039. Written comments should be addressed to: David Wolanski, Watershed Assessment and Management Section, Silver Lake Plaza-Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464. Electronic versions of comments are preferred; please e-mail comments to David Wolanski at [david.wolanski@state.de.us](mailto:david.wolanski@state.de.us).

### **DIVISION OF WATERSHED STEWARDSHIP**

#### **REGISTER NOTICE**

#### **7408 TMDLs for Nutrients for the Murderkill River Watershed**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding proposed amendments to the Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming materials for the Murderkill River Watershed, which was promulgated in June of 2005. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Since promulgation of the 2005 Murderkill River TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions resulted in proposing scientifically-based, site-specific dissolved oxygen criteria for the tidal Murderkill River. This proposed amendment of the 2005 TMDLs is to comply with this new site-specific dissolved oxygen criteria for the tidal Murderkill River.

This proposed action will amend the 2005 Murderkill River TMDLs Regulation. DNREC will work with Kent County Government and other parties to implement the requirements of the amended TMDLs.

The Public Hearing on proposed amendments to the 2005 Murderkill River Watershed TMDLs Regulation will be held at 5:00 p.m., Tuesday, April 29, 2014, in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). All written comments must be received by May 16, 2014. Electronic submission is preferred.

Copies of the Proposed amendments to the 2005 Murderkill River TMDL Regulation and other related technical support documents are available on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**1000 Board of Pilot Commissioners**

The Delaware Board of Pilot Commissioners, pursuant to 23 **Del.C.** §102(1), proposes to revise regulation 11.2 by striking it in its entirety and revise Section 6.0 by removing the 120 limitation on annual physicals. The purpose for the removal of subsection 11.2 is that vessels of the size required to be piloted by this rule are no longer calling at the port, making compliance with this regulation difficult and unnecessary. The purpose for the removal of the 120 limitation on annual physicals in regulation 6.0 is that the current constrictions of private health insurance often limit annual physicals to one per year, and this limitation is making compliance with insurance requirements difficult to impossible.

The Board will hold a public hearing on the proposed regulation change on May 16, 2014 at 1:00 p.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Margaret Strauss, Board Liaison for the Delaware Board of Pilot Commissioners, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until June 2, 2014 pursuant to 29 **Del.C.** §10118(a).

**DIVISION OF PROFESSIONAL REGULATION**  
**PUBLIC NOTICE**  
**4100 Board of Home Inspectors**

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes address two separate issues. The first is a change to regulation 4.0 which would enable applicants with five years of experience or who have completed 250 home inspections to obtain a license despite not being eligible as an endorsement candidate. Currently, such candidates must become trainee registrants before obtaining a home inspection license. The second proposed change relates to regulation 18.0 regarding standards of practice. The proposed changes would reflect recent changes to the American Society of Home Inspectors standards of practice so as to allow the practice of home inspection in Delaware to remain consistent with surrounding states.

The Board will hold a public hearing on the proposed regulation change on May 13, 2014 at 9:00 a.m., Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrative Specialist of the Delaware Board of Architects, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until May 28, 2014 pursuant to 29 **Del.C.** §10118(a). The Board will deliberate on the proposed changes at its regularly scheduled meeting on June 10, 2014 at 9:30 a.m.

**DIVISION OF PROFESSIONAL REGULATION****PUBLIC NOTICE****5200 Board of Examiners of Nursing Home Administrators**

The Delaware Board of Examiners of Nursing Home Administrators, pursuant to 24 **Del.C.** §5206(1), proposes to revise its regulations. The proposed revisions to the regulations would mandate that AIT registrants take additional training in preparation for the National Association of Long Term Care Administrator Boards and the practice of nursing home administration. The Board has always strongly recommended that applicants take the course and now recommends that the course become mandatory pursuant to 24 **Del.C.** §5209(a)(1).

The Board will hold a public hearing on the proposed rule change on May 13, 2014 at 1:00 p.m., in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Sheryl Paquette, Administrator of the Delaware Board of Nursing Home Administrators, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904.